

### **ADVISORY OPINION 2003-001**

**Any advisory opinion rendered by the registry under subsection (1) or (2) of this section may be relied upon only by the person or committee involved in the specific transaction or activity with respect to which the advisory opinion is rendered. KRS 121.135(4).**

February 10, 2003

Mr. Roger Thoney  
17 Meadow Lane # 10  
Highland Heights, KY 41076

Dear Mr. Thoney:

This is in response to your January 9, 2003 letter requesting an advisory opinion concerning the impact the decision by you and Sonny Landham to run as an independent slate of candidates for Governor and Lieutenant Governor may have on your current candidate campaign account. Specifically, you ask the Kentucky Registry of Election Finance ("Registry") to analyze the following requests:

I. We request that the Registry treat our current campaign committee as a primary committee under KRS 121 and KRS 121A until the primary election on May 20.

II. We also request that we be permitted to transfer our primary committee's remaining funds and campaign debts to our general election committee, when it is formed, in accordance with KRS 121.180(10).

In support of your requests, you explain that "if [your slate] is required to form a general election campaign committee now, then each of the major candidates will be able

to accept up to \$2,000 in contributions from each of their donors while [your slate] could accept only \$1,000” from each of your slate’s contributors. You also state that your slate has elected to reject transfers from the election campaign fund.

I. KRS Chapters 121 and 121A do not contemplate a slate of candidates raising and spending money for an election in which they will not participate.

In response to your first request that the Registry permit you to continue your current candidate campaign account for the 2003 primary election, the short answer to your request is no.

KRS 121.015(2) defines “election” as “any primary, runoff primary, regular, or special election to fill vacancies regardless of whether a candidate or slate of candidates is opposed or unopposed in an election.” Therefore, while the definition does contemplate unopposed participants in a primary election, it does not contemplate a slate of candidates raising and spending money for an election in which it will not participate. Further, KRS 121A.080(6) requires a slate of candidates to “establish a separate candidate campaign account for each primary, runoff primary, and regular election in which it participates.” (Emphasis added.)

As an independent slate of candidates, your slate will not participate in the 2003 primary election. Although, as you state, the petition process is a required qualification, it does not fall within the statutory definition of election under KRS 121.015(2). Therefore, since you have changed your affiliation from Republican to independent, and, as such have abandoned your efforts to seek the Republican nomination for Governor and Lieutenant Governor during the 2003 primary election, you may not continue your current candidate campaign account for the 2003 primary election under KRS Chapters 121 and 121A.

II. A nonparticipating slate of candidates that is closing out its candidate campaign account may elect to dispose of any unexpended balance of funds in the manner provided by KRS 121.180(10).

In response to your second request that your slate be permitted to retain the unexpended funds remaining in your current candidate campaign account, the answer is a qualified yes.

In KREF Advisory Opinion 1999-011, the Registry considered a similar issue when a slate of candidates, who did not qualify to receive a transfer from the election campaign fund, sought to dispose of the funds remaining in its candidate campaign account at the end of the general election pursuant to KRS 121.180(10). The Registry abided by the narrowing construction offered by the Registry and upheld by the United States District Court for the Eastern District of Kentucky in Gable v. Jones, Civil Action No. 95-12 (E.D. Ky. 1996). Specifically, the court held that “in order to save KRS

121A.080(6), it will adopt the narrowing construction offered by the Registry and interpret KRS 121A.080(6) to require that only the unexpended balance of contributions and fund transfers in a candidate campaign account of a Participating Slate be forwarded to the Registry for deposit in the fund when the campaign account if [sic] closed.” Id. (partial declaratory judgment and order dismissing plaintiff’s third (III) and fourteenth (XIV) causes of action).

Since you have elected to reject transfers from the election campaign fund, and since you are closing out your candidate campaign account for the primary election, your slate may dispose of any unexpended balance of funds in accordance with KRS 121.180(10), which includes retaining the funds to seek election to the same offices of Governor and Lieutenant Governor.

However, note that campaign debt may not be carried forward to another election. KRS 121.150(14) specifically provides that no slate of candidates shall solicit or accept contributions for primary election expenses after the date of the primary. Therefore, you may not carry forward to the regular election any debts relating to your primary campaign for the Republican nomination for Governor and Lieutenant Governor.

This advisory opinion represents the Registry’s consideration of the circumstances presented in your letter. If you have any further questions, please do not hesitate to contact the Registry’s staff.

Sincerely,

Rosemary F. Center  
General Counsel

Enclosure

RFC/jh

Cc: Registry Members

Sarah M. Jackson  
Executive Director